

# THE INDIAN CHILD WELFARE ACT

## MANUAL OF POLICIES AND PROCEDURES, DIVISION 31

### CHAPTER 31-100: INTAKE

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CDSS Tribal Consultation · November 9<sup>th</sup>, 2017

1:00 PM – 3:30 PM



# Timelines

## Tribal Consultation Sessions:

- 9:30 AM – 12:00 PM: Tribal Customary Adoption
- 1:00 PM – 3:30 PM: MPP, Division 31 - Ch. 31-100: Intake

## Final Comment Deadline: December 1, 2017:

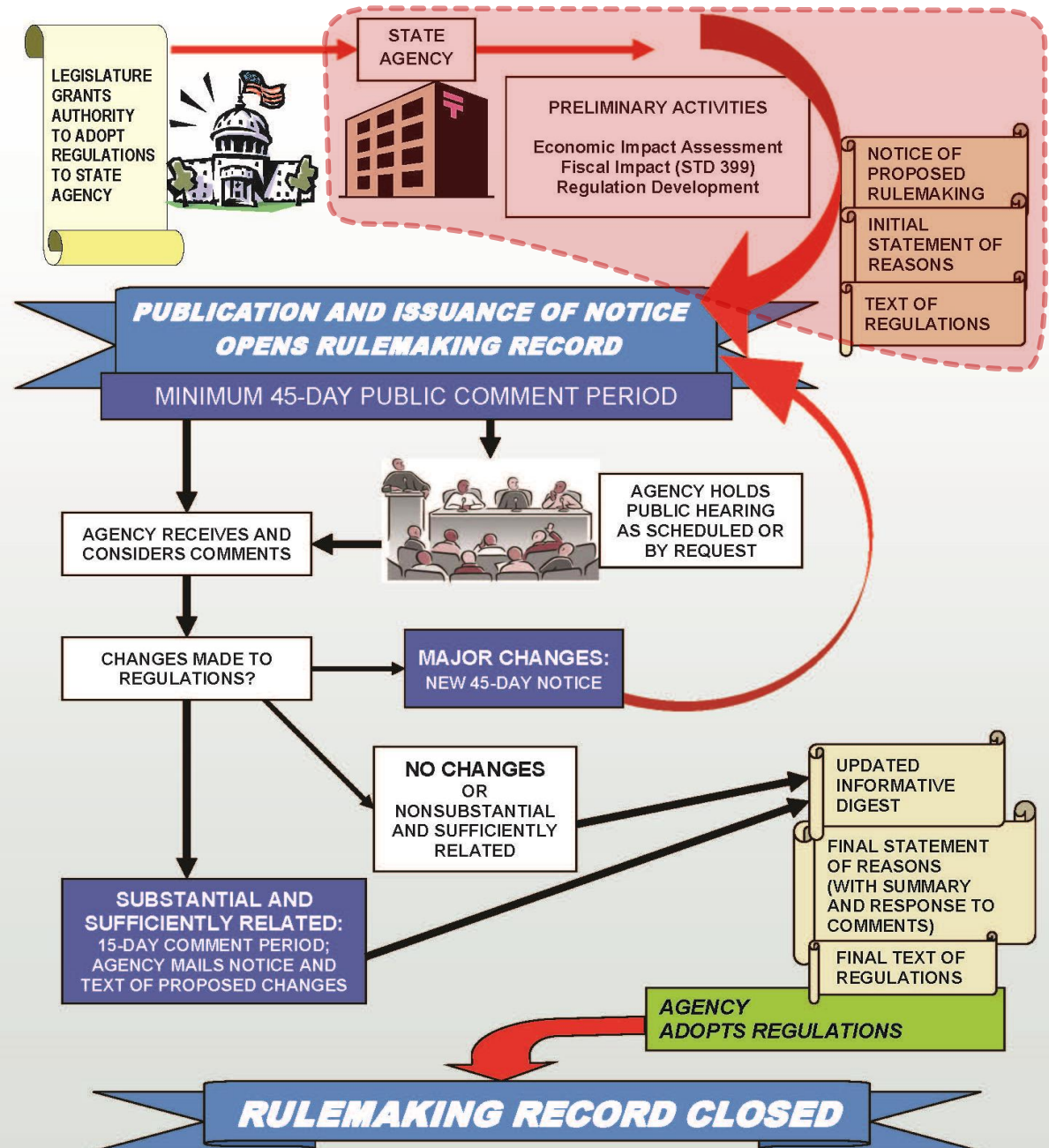
- Send to: [TribalConsultation@dss.ca.gov](mailto:TribalConsultation@dss.ca.gov)

# Presentation Outline

- Rulemaking Process overview.
- Purpose and goal.
- Manual of Policies and Procedures, Division 31 overview.
- Clarifying the Indian Child Welfare Act (ICWA).
- Regulatory revisions within Ch. 31-100: Intake:
  - Definitions
  - Inquiry
  - Reason to know
  - Active efforts
  - Jurisdiction
  - Notice

# Rulemaking Process Flowchart

Office of  
Administrative Law  
<https://oal.ca.gov/>



# Purpose & Goal

## Purpose:

- Consult with Tribal Leaders prior to submission of the regulation package for public review and comment.
- Ensure compliance with the federal ICWA regulations that went into effect on December 12, 2016.

## Goal:

- Provide clarification regarding the application of the ICWA as it pertains to the intake and investigation of child abuse or neglect referrals received by child welfare services agencies.

# Manual of Policies and Procedures (MPP), Division 31

An operational tool containing regulations that govern child welfare services programs.

- Composed of regulatory instruction; and
- Handbooks to provide reprinted statutory material, other department regulation and examples and best practices.

Six (6) Chapters:

- 31-000: General Reqs.
- 31-100: Intake
- 31-200: Case Plan
- 31-300: Service Delivery
- 31-400: Placement
- 31-500: Special Reqs.

# MPP Division 31, Chapter 31-100

Contains Nine (9) sections:

- 31-101: General
- 31-105: Emergency Response Protocol
- 31-110: In-Person Investigations
- 31-115: In-Person Immediate Investigations
- 31-120: In-Person Investigation within 10 Days
- 31-125: Investigation Requirements
- 31-130: Law Enforcement Assistance
- 31-135: Authority for Removal of Child
- 31-136: Transfer of an Indian Child

# Clarifying the Indian Child Welfare Act (ICWA)

## The Bureau of Indian Affairs (BIA)

- Issued ICWA regulations in 1979 and 1994;
- Issued ICWA guidelines in 1979 and 2015; and
- Issued ICWA regulations that went into effect December 12, 2016 (25 CFR 23, 81 Fed. Register 38778).

## The CDSS

- Completed an ICWA regulation package in October 2016.
- Is drafting regulatory revisions to Ch. 31-100 of the MPP.
- Established the Office of Tribal Affairs.



# Definitions in the MPP

Added or revised to mirror federal ICWA definitions (25 USC §1901 et seq. and 25 CFR §23.2):

- Active efforts (pg. 5.1)
- Child custody proceeding (pg. 7)
- Continued custody (pg. 8.1)
- Custody (pg. 8.2)
- Domicile (pg. 9)
- Emergency proceedings (pg. 9)
- Exclusive jurisdiction (pg. 14)
- Indian (pg. 12)
- Indian child (pg.13)
- Indian child's parent (pg. 13)
- Indian child's tribe (pg. 13.1)
- Indian foster home (pg. 13.1)
- Involuntary proceeding (pg. 14)
- Reservation (pg. 16.2)
- Voluntary proceedings (pg. 17.3)

# Definitions in the MPP (cont.)

Proposed definition for *emergency removal* (pg. 9):

"Emergency removal" in the case of an Indian child, means the immediate physical removal of the child from the parent(s) or Indian custodian that is necessary to prevent physical imminent damage or harm to the child.

❖ Input? Feedback?

## Definitions in the MPP (cont.)

Proposed definition for *qualified expert witness* (pg. 16):

"Qualified expert witness" means a person required to testify in an Indian child custody proceeding on whether continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. A qualified expert witness should have specific knowledge of the Indian tribe's culture and customs. A qualified expert witness may include, but is not limited to, a social worker, sociologist, physician, psychologist, traditional tribal therapist and healer, tribal spiritual leader, tribal historian, tribal elder, or any other person designated by the child's tribe, provided the individual is not an employee of the person or agency recommending foster care placement or termination of parental rights.

❖ Input? Feedback?

# Inquiry Requirements

- Occurs with the Indian child, the Indian child's parent(s), Indian custodian(s), tribe(s), and any other person who may have information about whether a child is an Indian child as defined by the ICWA.
- Regarding whether a child resides or is domiciled on a reservation of a tribe that exercises exclusive jurisdiction over child custody proceedings.
- Regarding whether a child is a ward of a tribal court.
- Begins at the hotline and continues throughout an entire case of a child abuse or neglect.

# The Importance of Inquiry

- Provides *reason to know* a child may be an Indian child.
- Prompts *active efforts* if the inquiry provides reason to know a child may be in an Indian child.
- Initiates a *jurisdiction* screening when a child welfare agency removes a child, who may be an Indian child, from the child's family.
- Prompts *notice* to the child's parent, Indian custodian, tribes and BIA.

# Inquiry in the MPP

Elements of *inquiry* incorporated into the MPP:

- A child's membership to a federally recognized Indian tribe or Alaska Native village;
- A child's possible membership, ancestry, or heritage to any tribe;
- A child's biological parent(s) is a member of a federally recognized Indian tribe or Alaska Native village;
- A child's biological family has ancestry or heritage;

# Inquiry in the MPP (cont.)

Elements of *inquiry* incorporated into the MPP:

- Contact with family members or any other person who may have information about a child's potential Indian status;
  - Whether a child resides or is domiciled on a reservation of a tribe that exercises exclusive jurisdiction over child custody proceedings; and
  - Whether a child is a ward of a tribal court.
- ❖ Are there additional *inquiry* elements that should be considered?

# Reason to Know in the MPP

- Identifying whether there is *reason to know* a child is an Indian child is necessary to apply substantive and procedural requirements of the ICWA including, but not limited to:
  - Inquiry
  - Active efforts
  - Jurisdiction
  - Notice

❖ Input? Feedback?



# Active Efforts Requirement

What are active efforts?

- Affirmative, active, thorough and timely efforts.

Why are active efforts important?

- Intended primarily to maintain or reunite an Indian child with his or her family.

When are active efforts applicable?

- Begins with initial hotline referral and occurs throughout an entire case when there is reason to know an Indian child is involved.

# Active Efforts in the MPP

Elements of *active efforts* incorporated within the MPP:

- Revised the definition to mirror 25 CFR §23.2.
- Provisions for case plans involving an Indian child.
- Provisions for emergency proceedings.
- Detailed documentation for evidentiary reference.
  - Specific efforts that can be documented as active efforts to prevent the removal of or to reunify an Indian child with the child's family.

# Active Efforts in the MPP (cont.)

Elements of *active efforts* incorporated within the MPP:

- Contact the CDSS and the BIA for assistance with identifying or locating an Indian child's parent(s), Indian custodian(s) and tribe.
- Inability to document the outcome of provided services due to family refusal to release such information.
- ❖ How should active efforts be documented when a parent/Indian custodian will not consent to the release of service outcome?
- ❖ Additional input? Feedback?

# Jurisdiction over Child Custody Proceedings

Tribal court vs. state court.

- The ICWA creates a presumptive jurisdiction over child custody proceedings involving an Indian child in tribal courts.

Exclusive jurisdiction over child custody proceedings involving an Indian child.

- Domiciled on a reservation of a tribe that exercises exclusive jurisdiction over child custody proceedings.
- Ward of a tribal court.

Transfer of child custody proceedings.

# Jurisdiction: Exclusive Jurisdiction in the MPP

Elements of *exclusive jurisdiction* added to the MPP:

Definitions:

- *Exclusive jurisdiction*
- *Domicile*

Inquiry regarding whether a child:

- Resides or is domiciled on a reservation where the tribe exercises exclusive jurisdiction over child custody proceedings.
- Is, or may be, a ward of a tribal court.

# Jurisdiction: Exclusive Jurisdiction (cont.)

Elements of *exclusive jurisdiction* added to the MPP:

- Notice of emergency removal.
- Notice of child custody proceedings.
- Transfer the child (physical custody).
- Dismiss the child custody proceeding.

# Jurisdiction: Transfer of Proceedings in the MPP

Elements of *transferring child custody proceedings* incorporated into the MPP:

- Petition for transfer.
  - Determination of good cause to deny a transfer request.
  - Transfer the child (physical custody).
  - Transfer the proceeding to the tribe's jurisdiction.
  - Provide the tribal court with the child's case record.
- ❖ Are there any additional elements of *transferring child custody proceedings* that should be considered?

# Notice Requirement

- Occurs in an involuntary child custody proceeding in state court where there is reason to know an Indian child is involved.
  - If identity or location of the parent(s), Indian custodian(s) or tribe(s) is unknown, send notice to the Secretary of the Interior.
- Provides due process by informing all parties of the right to intervene in child custody proceedings involving an Indian child.
- Send notice by registered or certified mail with return receipt requested.



# Notice in the MPP

Elements of *notice* incorporated within the MPP:

- Who must be sent a notice.
- What to do when the identity or location of notice recipients is unknown.
- What to include in the notice.
- How to send notice.
- When to send notice.
- Purpose of the notice.

## Notice in the MPP (cont.)

- Section 31-125: Investigation Requirements
- Section 31-135: Authority for Removal of Child
- ❖ Please review and provide feedback regarding the overall flow of the notice requirement within both sections. Does the reconfiguring of information provide clear and concise instruction regarding notice?

# Open Forum

- ❖ Is there any additional input or feedback? Questions?
  - Tribal Chairman or Tribal Chairperson;
  - Tribal Council;
  - Tribal Delegates; and
  - All others.

# Next Steps

Final Comments are due **Friday, December 1, 2017.**

- Send to: [TribalConsultation@dss.ca.gov](mailto:TribalConsultation@dss.ca.gov)

CDSS will:

- Respond to all suggestions, comments, and questions by Friday, December 22, 2017; and
- Submit the proposed regulations to the Office of Regulation Development to initiate the formal regulation adoption process in January 2018.

# Contact Information

## CDSS Office of Tribal Affairs:

- Phone: (916) 657-3539
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## CDSS Child Welfare Policy and Program Development Bureau (CWPPDB):

- Phone: (916) 651-6100

